

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.495 OF 2005

M/s.Enkay Texofood Industries Ltd. & Anr. .. Petitioners
V/s

Union of India & Ors. .. Respondents

Mr.K.K.Shroff i/by Akshar Laws for the Petitioners.
Ms.V.H.Kantharia with Mr.H.V.Mehta for the Respondents.

**CORAM : DR.S.RADHAKRISHNAN &
V.C.DAGA, JJ.**

DATE : 12th April, 2007.

P.C.:

1. Heard the learned Counsel for the parties. By this Petition the Petitioners are challenging the order dated 26th July, 2004 whereby the CESTAT had directed the Petitioners to make a pre deposit of 50% of duty amount as well as 50% of the penalty amount on or before 31st August, 2004 and had directed the compliance to be reported on 3rd September, 2004. The Customs duty levied was Rs.1,19,36,980/- and the penalty imposed was Rs.1,76,92,368/- .

2. It appears that the Petitioners did not comply with the order passed by the CESTAT and simply allowed the time to be consumed, and on 4th September, 2004 approached the Deputy Commssioner and sought to adjust the amount of Rs.20 lakhs being the Bank Guarantee furnished earlier, towards the above pre-deposit.

3. The appeal came to be dismissed by the CESTAT by an order dated 3rd September, 2004 for non compliance of

the pre-deposit order dated 26th July, 2004. Aggrieved by the aforesaid order the Petitioners have approached this Court on 20.12.2004 and this Petition was numbered on 23.2.2005. This matter appeared before the Court on 29.3.2005 and on that day it came to be adjourned for a week. Thereafter this matter never appeared on board till date.

4. Pursuant to our directions to the office, the office has placed this matter before us. However, it may be noted here that since 29.3.2005 the Petitioners have not taken any steps in the above matter to get the same place before the Court. The Petitioners neither mentioned the matter nor took any initiative to place the matter on board. The learned Counsel for the Petitioners is unable to explain the delay and the lack of initiative on the part of the Petitioners.

5. In this context, it would be relevant to refer to a judgment of this Court in the case of **P.Narayana Pillai V/s.T.V.Rangarajan - 1974 Mah.L.J.352**, wherein, in paragraphs 7, 16, 17 and 23 of the judgment, this Court observed as under and finally rejected the Petition:-

7. For 21 whole months the petition lay in its docket in the Court and no action was taken by the Petitioner to move the Court for acceptance of the petition. After this long period of 21 months the matter was again mentioned on July 4, 1973 when an application was made to the Court by the Petitioner for condonation of delay to carry out the amendment of the petition which had been permitted by the Court on August 30, 1971.

16. In the instant case the petitioner appears to have calmly abandoned or at any rate put into cold storage his remedy under Article 226 of the Constitution of India. There is no explanation from the petitioner as to what prevented him from getting the petition brought before the Court and an appropriate rule or order issued.

17. In these circumstances, it cannot be said that the petitioner is not guilty of gross delay in pursuing the remedy that was open to him in the first place.

23. In the case before me the petitioner has not only shown no diligence but, at the time of moving the Court for acceptance of the petition, has not chosen to explain by affidavit or otherwise what prevented him from doing so. He has remained silent and must bear the consequences of his silence and inaction.

6. In the present case also there is no explanation whatsoever, for not moving this Court after 29.3.2005, i.e. more than two years. Thus because of total negligence and callousness on the part of the Petitioners we are not inclined to entertain this petition. The Petition stands rejected.

(V.C.DAGA, J.)

(DR.S.RADHAKRISHNAN, J.)